



0000167782

ORIGINAL**BEFORE THE ARIZONA CORPORATION COMMISSION****COMMISSIONERS**

DOUG LITTLE – Interim Chairman
BOB STUMP
BOB BURNS
TOM FORESE
VACANT

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

2016 JAN 20 PM 1 42

In the matter of:

DOCKET NO. S-20938A-15-0308

USA BARCELONA REALTY ADVISORS, LLC, an
Arizona limited liability company,

USA BARCELONA HOTEL LAND COMPANY I,
LLC, an Arizona limited liability company,

RICHARD C. HARKINS, an unmarried man,

ROBERT J. KERRIGAN (CRD no. 268516), an
unmarried man,

GEORGE T. SIMMONS and JANET B. SIMMONS,
husband and wife,

BRUCE ORR, an unmarried man,

Respondents.

Arizona Corporation Commission

DOCKETED

JAN 19 2016

DOCKETED BY

KE

FIFTH
PROCEDURAL ORDER
(Grants Leave to File
Amended Notice)

BY THE COMMISSION:

On August 26, 2015, the Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing (“T.O. and Notice”) against USA Barcelona Realty Advisors, LLC (“Barcelona Advisors”), USA Barcelona Hotel Land Company I, LLC (“Barcelona Land Company”), Richard C. Harkins, Robert J. Kerrigan, George T. Simmons and Janet B. Simmons, husband and wife (the “Simmonses”), and Bruce Orr (collectively “Respondents”), in which the Division alleged violations of the Arizona Securities Act (“Act”) in connection with the offer and sale of securities in the form of promissory notes, and investment contracts or membership interests.

The spouse of George T. Simmons, Janet B. Simmons (“Respondent Spouse”) is joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

1 The Respondents were duly served with copies of the T.O. and Notice.

2 On September 11, 2015, Respondent George T. Simmons, individually and on behalf of his
3 marital community, filed a Request for Hearing pursuant to A.A.C. R14-4-306.

4 On September 14, 2015, Respondent Robert J. Kerrigan filed a Request for Hearing pursuant
5 to A.A.C. R14-4-306.

6 On September 15, 2015, Respondent Richard C. Harkins filed a Request for Hearing pursuant
7 to A.A.C. R14-4-306.

8 On September 18, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.R.S.
9 § 44-1972, A.A.C. R14-4-306 and A.A.C. R14-4-307, was filed on behalf of Robert J. Kerrigan by
10 counsel Robert D. Mitchell and Sarah K. Deutsch.

11 On September 23, 2015, by Procedural Order, a pre-hearing conference was scheduled to
12 commence on October 13, 2015.

13 On September 28, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.A.C.
14 R14-4-306 and R14-4-307, was filed on behalf of George T. Simmons and Janet B. Simmons by
15 counsel Charles R. Berry and Stanley R. Foreman.

16 On September 29, 2015, Respondent Robert J. Kerrigan filed an Answer to Temporary Order
17 to Cease and Desist and Notice of Opportunity for Hearing.

18 Also on that day, Bruce Orr filed a letter. Mr. Orr's letter responded to assertions made in the
19 T.O. and Notice. Mr. Orr further requested to "have my name removed from this complaint." To
20 preserve Mr. Orr's due process rights, his September 29, 2015 letter was considered a request for
21 hearing and answer to the T.O. and Notice.

22 On October 2, 2015, by Procedural Order, the pre-hearing conference remained scheduled for
23 October 13, 2015.

24 Also on October 2, 2015, George T. Simmons filed an Answer to the Temporary Order to Cease
25 and Desist and Notice of Opportunity for Hearing.

26 On that same day, Richard Harkins filed a pro per Answer to the Temporary Order to Cease
27 and Desist and Notice of Opportunity for Hearing. Mr. Harkins asserted the pro per answer to also be
28 the answer of Barcelona Advisors and Barcelona Land Company.

1 On October 13, 2015, the pre-hearing conference was held as scheduled. The Division appeared
2 through counsel, as did Mr. Kerrigan and the Simmonses. Mr. Harkins appeared on his own behalf
3 and purportedly on behalf of Barcelona Advisors and Barcelona Land Company. The scheduling of a
4 hearing date was discussed. Mr. Harkins was informed that because he is not an attorney, he cannot
5 represent Barcelona Advisors and Barcelona Land Company.

6 On October 14, 2015, by Procedural Order, a hearing was scheduled to commence on March 7,
7 2016.

8 On December 29, 2015, the parties, except Mr. Orr, filed a Stipulation Regarding Leave to
9 Amend Temporary Order to Cease and Desist and Notice of Opportunity for Hearing and Regarding
10 Continuing Hearing (the "Stipulation"). As stated in the Stipulation, the Division sought to amend the
11 T.O. and Notice to add factual allegations arising from the Division's ongoing investigation. The
12 parties, except Mr. Orr, stipulated that the Administrative Law Judge may allow for the Division to
13 amend the T.O. and Notice under A.A.C. R14-3-106(E). The Stipulation further contained a request
14 that the March 7, 2016 hearing be continued to commence on or after May 9, 2016, with a
15 corresponding change of the January 8, 2016 deadline for the exchange of witness lists and copies of
16 exhibits.

17 On December 30, 2015, by Procedural Order, the hearing scheduled to commence on March 7,
18 2016, was vacated and rescheduled to commence on May 9, 2016. Mr. Orr was given until January
19 13, 2016, to file a response to the Stipulation.

20 To date, no response to the Stipulation has been filed by Mr. Orr.

21 IT IS THEREFORE ORDERED that **the Division is granted leave to amend the T.O. and**
22 **Notice, pursuant to A.A.C. R14-3-106(E). The Division shall file an amended T.O. and Notice by**
23 **January 27, 2016.**

24 IT IS FURTHER ORDERED that the **hearing remains scheduled to commence on May 9,**
25 **2016, at 10:00 a.m., at the Commission's offices, 1200 West Washington Street, Hearing Room**
26 **No. 2, Phoenix, Arizona.**

27 IT IS FURTHER ORDERED that **the parties shall also reserve May 10-13, 16-20, and 23-**
28 **27, 2016, for additional days of hearing, if necessary.**

1 IT IS FURTHER ORDERED that the Division and Respondents shall exchange copies of
2 their Witness Lists and copies of the Exhibits by March 10, 2016, with courtesy copies provided to
3 the presiding Administrative Law Judge.

4 IT IS FURTHER ORDERED that if the parties reach a resolution of the issues raised in the
5 Notice prior to the hearing, the Division shall file a Motion to Vacate the Proceeding.

6 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
7 Communications) is in effect and shall remain in effect until the Commission's Decision in this matter
8 is final and non-appealable.

9 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
10 31, 38 and 39, and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

11 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
12 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
13 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
14 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
15 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
16 Law Judge or the Commission.

17 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,
18 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
19 ruling at hearing.

20 DATED this 20th day of January, 2016.

21 
22 MARK PRENY
23 ADMINISTRATIVE LAW JUDGE

24 Copies of the foregoing mailed/delivered
this 20th day of January, 2016, to:

25 Robert D. Mitchell
26 Sarah K. Deutsch
27 TIFFANY & BOSCO PA
28 Camelback Esplanade II, Seventh Floor
2525 East Camelback Road
Phoenix, AZ 85016
Attorneys for Robert J. Kerrigan

1 Richard C. Harkins
2 4422 East Lupine Avenue
3 Phoenix, AZ 85028

4 Charles R. Berry
5 Stanley R. Foreman
6 CLARK HILL, PLC
7 14850 N. Scottsdale Road, Suite 500
8 Scottsdale, AZ 85254
9 Attorneys for George T. Simmons and Janet B. Simmons

10 Bruce Orr
11 3757 Falcon Avenue
12 Long Beach, CA 90807

13 Matthew Neubert, Director
14 Securities Division
15 ARIZONA CORPORATION COMMISSION
16 1300 West Washington Street
17 Phoenix, AZ 85007

18 By: Rebecca Unquera
19 Rebecca Unquera
20 Assistant to Mark Preny
21
22
23
24
25
26
27
28